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EX PARTE OR LATE FILED

May 6, 1999

EX PARTE

Magalie R. Salas, Secretary  
Federal Communications Commission  
The Portals Building  
445 12th Street, SW  
TW-A325  
Washington, D.C. 20554

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MAY 6 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: CC Docket No. 94-54

Dear Ms. Salas:

On May 5, 1999, Raidza Wick of America One Communications, Inc., along with Henry Goldberg, met with Dan Connors, Legal Advisor to Commissioner Ness, regarding the above-referenced proceeding. The attached document summarizes the issues discussed.

Sincerely,



Henry Goldberg  
Attorney for  
America One Communications, Inc.

Attachment

cc: Dan Connors

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List A B C D E

**THE COMMISSION SHOULD RETAIN ITS BUNDLED RESALE REQUIREMENT, OR, AT THE VERY LEAST, REQUIRE THE AIRTIME PORTION OF THE BUNDLE TO BE AVAILABLE FOR RESALE ON A NON-DISCRIMINATORY BASIS.**

America One is one of the largest resellers of wireless services in the United States. America One targets underserved markets through direct-mail, information-based marketing strategies. Unlike most facilities-based wireless providers, America One and other resellers focus on customers who cannot afford (or have no need for) costly service plans that require the purchase of large-minute bundles. Thus, America One and other CMRS resellers add value to, and help expand consumer choice in, wireless markets.

**The Resale Requirement**

In 1996, the Commission decided to apply a resale requirement to all CMRS providers.<sup>1</sup> When it adopted the CMRS resale rule, at least one carrier suggested that the resale obligation should not apply to bundled offerings (*e.g.*, airtime and CPE).<sup>2</sup> The Commission, however, declined to limit the resale rule along those lines so that the resale rule does, today, apply to bundled offerings.

Recently, in the context of the reconsideration of that 1996 Order, there have been indications that the Commission is reviewing the question of whether the CMRS resale rule should apply to bundled packages.<sup>3</sup> Although bundled packages are not, in America One's experience, often resold as such, the elimination of the "bundled resale" policy would open the door for unfair price discrimination by facilities-based carriers and undermine the basic resale rule.

**The Bundled Resale Requirement Should Not Be Eliminated**

The basic resale requirement, 47 C.F.R. § 20.12, plays a vital role in fostering a vibrant CMRS market. As the Commission has recognized, "resale confers important public benefits in less competitive markets, including encouraging competitive pricing; discouraging unjust, unreasonable, and unreasonably

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<sup>1</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 11 FCC Rcd 18455 (1996), *recon. pending*.

<sup>2</sup> In 1992, the Commission determined that cellular service providers could offer bundled packages of airtime and CPE. See Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028 (1992). It has continued that policy with respect to other CMRS services. However, airtime in a bundled package must also be available separately on a nondiscriminatory basis. *Id.*

<sup>3</sup> See In the Matter of PCIA's Petition for Forbearance, 13 FCC Rcd 16857, 16873 n.87 (1998).

discriminatory practices; reducing the need for regulatory intervention and concomitant market distortions; promoting innovation; improving carrier management and marketing; generating increased research and development; and positively affecting the growth of the market.”<sup>4</sup>

The many benefits associated with CMRS resale, however, would cease to flow were it not for the CMRS resale requirement. Many facilities-based carriers are resistant to resale. Absent the requirement these carriers would refuse to offer their products and services for resale. Indeed, the Commission recently concluded that “abuses in the form of refusals to offer services for resale still exist” and that the resale rule remains necessary to ensure that resale opportunities continue to be available.<sup>5</sup> For this reason, America One opposes elimination of the basic resale requirement.

For the same reason, America One opposes the elimination of the bundled resale requirement.<sup>6</sup> While bundling began with CPE and cellular airtime, now multi-service, facilities-based carriers are packaging wireless airtime with long distance telephone service, Internet service, local exchange service, as well as with CPE.

If facilities-based carriers are permitted to restrict resale of bundled packages, many will attempt to skirt the basic resale requirement by using bundled packages to discount airtime below the rates at which the airtime is available to resellers in unbundled form. For example, a carrier might discount bundled CPE to, in effect, discount the bundled airtime. Conversely, facilities-based carriers may attempt to offer discounted airtime in bundled packages at rates that are not available to resellers on an unbundled basis. Either way, the elimination of the bundled resale requirement opens the door for facilities-based carriers to structure their offerings to undermine the basic resale requirement.

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<sup>4</sup> 13 FCC Rcd at 16873. Resale also has helped to bring service to smaller and underserved markets, and provided opportunities for small businesses. “In wireless markets in particular, resale allows companies that may not have access to spectrum to offer full packages of services and products.”

<sup>5</sup> *Id.* at 16876-77.

<sup>6</sup> While a number of CMRS resellers do not often resell the bundled CPE/airtime package, the resale requirement serves as an important check on the ability of equipment suppliers and facilities-based carriers to put resellers at a significant competitive disadvantage by not making available the latest, multi-featured phones to resellers, particularly if there is a limited supply of such phones.

The Commission should, therefore, retain the bundled resale requirement. If, however, the Commission relieves facilities-based carriers of the requirement to resell the "bundle," it should, at a minimum, make explicit the requirement that the airtime portion of a bundled retail offering must itself be available for resale on a nondiscriminatory and stand-alone basis. Accordingly, the Commission should require that the airtime portion of any bundled offering must be made separately available for resale at the bundled price. If facilities-based carriers are not required to make bundled packages available for resale, such a non-discrimination requirement is essential to prevent the bundled-package exception from swallowing the basic resale rule.